

H. Troy Romero, CBN #224867
ROMERO PARK, P.S.
16935 W. Bernardo Drive, Suite 260
San Diego, CA 92127
Email: tromero@romeropark.com
Telephone: 858-592-0065

Attorneys for Defendants Crowe, Lyonette, Rau, Ross, Malcolm, and Jimenez

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CALIFORNIA
NORTHERN DISTRICT**

10 || Carl A. Wescott,

Plaintiff,

vs.

13 David Crowe; Mike Lyonette;
14 Thomas P. Madden; Taylor Collins; Jeff Rau;
14 Darrell Bushnell; Amy Bushnell;
15 Peter Tierney; Kathy Fettke; Susie Yee;
15 Norman Davies; Claire Davies; Sandra Winfrey
16 Brian Putze; Colin Ross; Brad Malcolm;
16 Michael Jimenez; Gustavo Varela; Robert
17 Crowe; Bernadette Brown; Federico Gurdian;
17 Terencio Garcia, Does 1 through 50,

Defendants.

No: 3:20-cv-06456-JD

DECLARATION OF H. TROY ROMERO
IN SUPPORT OF RESPONSE IN
OPPOSITION TO PLAINTIFF'S RULE
37(d)(2) MOTION AGAINST JEFFREY
RAU

Hearing Date: May 12, 2022

Hearing Time: 10:00 a.m.

Courtroom: 11

Judge: Hon. James Donato

22 I, H. Troy Romero, under penalty of perjury under the laws of the State of California, do
23 declare as follows:

24 1. I am over the age of 18 and competent to testify regarding the matters set forth herein.
25 2. I am counsel of record for Defendant Jeff Rau in the above-captioned matter.
26 3. On or around June 2021, Plaintiff propounded his First Set of Requests for Production
("RFPs") on Mr. Rau. Mr. Rau timely responded even though he had a pending Motion to Dismiss.

1 4. As is clear from a review of the subject discovery requests, Plaintiff asked questions
2 that were overly broad and unduly burdensome. Still, Mr. Rau provided documents to Plaintiff by
3 December 12, 2021. He also provided a privilege log identifying documents that were withheld
4 from production either because they were protected by the attorney client privilege and/or because
5 they sought documents that were subject to confidentiality provisions.

6 5. Plaintiff continued to request communications Mr. Rau either did not possess or that
7 were privileged. For example, Plaintiff asked for texts messages, which Mr. Rau did not have.
8 Plaintiff also sought many documents that were completely unrelated to the case at Bar. Mr. Rau,
9 through my firm, repeatedly informed Plaintiff that Mr. Rau either did not have the documents
10 requested or the document was part of the privilege log. Rather than request a meet and confer to
11 identify specific documents Plaintiff believes Mr. Rau has that were responsive he began
12 threatening my staff/associates and my firm. Further, shortly after he filed his Third Amended
13 Complaint, he filed the subject motion. At no time did Plaintiff attempt to meet and confer with me
14 to comply with the local rules.

15 6. Specifically, Plaintiff did not meet and confer with me under Local Civil Rule (“LCR”)
16 1-5 and LCR 37. To date, Plaintiff has failed to satisfy this requirement before bringing his Motion.

17 7. Even if Plaintiff had complied with the applicable procedural rules for bringing this
18 motion (which he did not), his failure to cite what specific documents he claims were not produced
19 and why is fatal to his Motion. To illustrate, Plaintiff cites in his Motion to a homeowners
20 insurance policy that he claims should have been produced. While the request is not reasonably
21 calculated to lead to the discovery of admissible evidence it was nonetheless subsequently
22 produced – a fact Plaintiff fails to mention in his Motion. The reality is Mr. Rau has complied with
23 his discovery obligations under FRCP 26 and FRCP 37.

24 I HEREBY DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
25 STATE OF WASHINGTON AND THE UNITED STATES OF AMERICA THAT THE
26 FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.
27
28

1 DATED this 25th day of March 2022 at San Diego, San Diego County, California.
2

3 
4

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

H. Troy Romero

PROOF OF SERVICE BY ELECTRONIC MAIL

I, Kathy Koback, certify and declare as follows:

I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within-entitled cause. I am an employee with the law firm of Romero Park P.S., whose addresses are 16935 West Bernardo Drive, Suite 260, San Diego, California 92127 and 155 – 108th Avenue NE, Suite 202, Bellevue, Washington 98004, which is located in the county where the mailing described below took place.

On March 25, 2022, at my place of business in Bellevue, Washington, a copy of the attached document described as:

DECLARATION OF H. TROY ROMERO IN SUPPORT OF RESPONSE IN OPPOSITION TO
PLAINTIFF'S RULE 37(d)(2) MOTION AGAINST JEFFREY RAU

was sent via electronic mail pursuant to the parties' agreement for acceptance of service via electronic mail, and addressed to:

Carl A. Wescott
8210 e. Via De La Escuala
Scottsdale, Arizona 85258
Email: carlwsoj@gmail.com

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: March 25, 2022.

2021)

Kathy Koback, Legal Assistant